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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-250**

12 **WALTER MILTON BESSE**
13 **358 5th Street**
14 **Huntington Beach, CA 92648**

ACCUSATION

15 **Registered Nurse License No. 573547**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about October 31, 2000, the Board of Registered Nursing issued Registered
24 Nurse License Number 573547 to Walter Milton Besse (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on December 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), an expired license may be renewed at any time within eight years after expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued..

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

5 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
6 'registration.'"

7 9. Section 2761 of the Code states:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the following:

11 "...

12 (f) Conviction of a felony or of any offense substantially related to the qualifications,
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be
14 conclusive evidence thereof."

15 "..."

16 10. Section 2762 of the Code states:

17 "In addition to other acts constituting unprofessional conduct within the meaning of this
18 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
19 following:

20 "...

21 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
22 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
23 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
24 himself or herself, any other person, or the public or to the extent that such use impairs his or her
25 ability to conduct with safety to the public the practice authorized by his or her license.

26 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
27 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
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1 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
2 of this section, in which event the record of the conviction is conclusive evidence thereof.”

3 11. Section 2765 of the Code states:

4 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
5 charge substantially related to the qualifications, functions and duties of a registered nurse is
6 deemed to be a conviction within the meaning of this article. The board may order the license or
7 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
8 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
9 order granting probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
11 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
12 of guilty, or dismissing the accusation, information or indictment.”

13 REGULATIONS

14 12. California Code of Regulations, title 16, section 1444, states:

15 “A conviction or act shall be considered to be substantially related to the qualifications,
16 functions or duties of a registered nurse if to a substantial degree it evidences the present or
17 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
18 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

19 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
20 subdivision (d) of Penal Code Section 11160.

21 “(b) Failure to comply with any mandatory reporting requirements.

22 “(c) Theft, dishonesty, fraud, or deceit.

23 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
24 Penal Code.”

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1 13. California Code of Regulations, title 16, section 1445 states:

2 "....

3 "(b) When considering the suspension or revocation of a license on the grounds that a
4 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such
5 person and his/her eligibility for a license will consider the following criteria:

6 "(1) Nature and severity of the act(s) or offense(s).

7 "(2) Total criminal record.

8 "(3) The time that has elapsed since commission of the act(s) or offense(s).

9 "(4) Whether the licensee has complied with any terms of parole, probation, restitution or
10 any other sanctions lawfully imposed against the licensee.

11 "(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
12 Penal Code.

13 "(6) Evidence, if any, of rehabilitation submitted by the licensee."

14 COST RECOVERY

15 14. Section 125.3 of the Code provides that the Board may request the administrative law
16 judge to direct a licensee found to have committed a violation or violations of the licensing act to
17 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

18 FIRST CAUSE FOR DISCIPLINE

19 (May 10, 2002, Conviction for DUI and Failure to Maintain Lane on January 4, 2002)

20 15. Respondent is subject to disciplinary action under Code sections 490 and 2761,
21 subdivision (f), on the grounds that he was convicted of a crime that is substantially related to the
22 qualifications, functions and duties as a registered nurse. The circumstances are as follows:

23 a. On May 10, 2002, in a criminal case entitled *The State of Georgia v. Walter Milton*
24 *Besse*, State of Georgia, State Court of Dekalb County case number 02C23712-1A, Respondent
25 was convicted on his plea of guilty of violating O.C.G.A. section 40-60391, subdivision (a)(1),
26 driving under the influence of alcohol, and O.C.G.A. section 40-6-48 and 40-6-1, failure to
27 maintain a lane.

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1 b. The facts that led to these convictions are that on January 4, 2002, a State of Georgia,
2 Dekalb County Police officer observed Respondent drive his vehicle up onto a curb and into the
3 grass, then back onto the road. When the officer pulled Respondent over and Respondent opened
4 his car door, the officer noticed a strong odor of an alcoholic beverage. The officer observed
5 Respondent almost fall and grab the car door to stop his fall as he stepped out of his vehicle.
6 When asked by the officer, Respondent responded that he just had a little to drink but more than
7 2 drinks. The officer attempted to conduct an evaluation of Respondent but he could not follow
8 the officer's instructions and the officer's evaluation of Respondent was stopped. The officer
9 found a bottle of vodka in Respondent's vehicle that was a quarter (1/4) empty. Respondent was
10 arrested and transported to Dekalb Jail, where he could not even sign a citation.

11 c. As a result of the convictions, Respondent was sentenced to serve 24 hours in
12 confinement with a credit for 13½ hours served, and serve 12 months on probation on terms
13 including to complete a Risk Reduction Program in Georgia or California; perform 64 hours of
14 community service in Georgia or California; not violate the criminal laws of any government
15 unit; avoid injurious and vicious habits-especially alcohol intoxication and narcotics and other
16 dangerous drugs unless prescribed lawfully; avoid persons or places of disreputable or harmful
17 character; report to the Probation Officer as directed and permit each Officer to visit him at home
18 or elsewhere; work faithfully at suitable employment insofar as may be possible; not change his
19 present place of abode; move outside the jurisdiction of the Court, or leave the State for any
20 period of time without prior permission of the Probation Supervisor; support his legal dependents
21 to the best of his ability; pay various fines and fees, pay for probation, and have his driver's
22 license suspended.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(June 1, 2005, Conviction for DUI with Prior on January 22, 2005)**

25 16. Respondent is subject to disciplinary action under Code sections 490 and 2761,
26 subdivision (f), on the grounds that he was convicted of a crime that is substantially related to the
27 qualifications, functions and duties as a registered nurse. The circumstances are as follows:

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1 a. On June 1, 2005, in a criminal case entitled *The People of the State of California v.*
2 *Walter Milton Besse*, Orange County Superior Court, West Justice Center case number
3 05WM01669, Respondent was convicted on his plea of guilty to violating Vehicle Code section
4 23152, subdivision (b), driving with blood alcohol content (BAC) .08 percent or more.
5 Respondent also admitted to a prior DUI conviction on May 10, 2002, in Georgia and a special
6 allegation that Respondent had a BAC of .20 percent or more by weight.

7 b. The facts that led to the conviction are that on January 22, 2005, a Huntington Beach
8 police officer observed Respondent not move his vehicle for about 5 seconds after a signal turned
9 green, then drive 20 miles per hour in a 40 mile per hour zone, weaving back and forth in his lane,
10 twice touching the broken white line dividing two lanes. Also, as Respondent pulled into the
11 parking lot of a large apartment complex at 21051 Newland in Huntington Beach, the officer
12 observed Respondent's vehicle almost strike a black Honda Accord that was parked one parking
13 stall south of where Respondent was attempting to park. Upon contacting Respondent, the officer
14 observed that Respondent showed the obvious signs and symptoms of alcoholic beverage
15 intoxication. After field balance testes were performed, Respondent was arrested. The
16 preliminary alcohol screen (P.A.S.) test yielded 0.183 percent BAC at 21:17 hours and
17 Respondent's blood test yielded results of 0.218 and 0.209 percent BAC.

18 c. As a result of the conviction, Respondent was sentenced to serve 45 days in
19 Orange County Jail, with credit for 1 day served, which could be served at Seal Beach City Jail
20 on weekends, 5 years informal probation on terms including complete a Mother's Against Drunk
21 Driving (MADD) Victim's Impact Panel Program; complete a 18 month Multiple Offender
22 Alcohol Program; obey all rules of the programs and not to leave the programs without court
23 approval; violate no law; pay various fines and fees; not drive without a valid driver's license,
24 without proof of valid auto liability insurance or financial responsibility; use true name and date
25 of birth only at all times; have his driver's license restricted for 18 months to drive only to and
26 from program, work, and during the course of employment; not drink and drive; submit to a
27 chemical test of blood, breath, or urine on demand of any peace officer or probation officer, and
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1 disclose terms and conditions of probation when asked by any law enforcement or probation
2 officer.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(January 12, 2010, Conviction for DUI on August 9, 2009)**

5 17. Respondent is subject to disciplinary action under Code sections 490 and 2761,
6 subdivision (f), on the grounds that he was convicted of a crime that is substantially related to the
7 qualifications, functions and duties as a registered nurse. The circumstances are as follows:

8 a. On January 12, 2010, in a criminal case entitled *The People of the State of California*
9 *v. Walter Milton Besse*, Orange County Superior Court, Harbor Justice Center, Newport Beach
10 Facility case number 09HF1419, Respondent was convicted on his plea of guilty to violating
11 Vehicle Code section 2880.2, evading a peace officer while driving recklessly; Vehicle Code
12 section 23152, subdivision (b), driving with a BAC of 0.08 percent or greater; Vehicle Code
13 section 12500, subdivision (a), driving without a valid license; and admitted a prior DUI
14 conviction on June 1, 2005; in Orange County Superior Court, West Justice Center case
15 number 05WM01669, referenced in the Second Cause for Discipline.

16 b. The facts that led to the conviction are that on August 9, 2009, Respondent was
17 traveling in the exit only lane of I-405 southbound to Harbor Boulevard in Costa Mesa and was
18 observed by a California Highway Patrol (CHP) officer crossing three feet onto the right shoulder
19 and back in into the #2 exit lane. The CHP officer followed Respondent onto southbound I-405
20 to the Harbor Boulevard off ramp. Respondent continued to show signs of radical driving with
21 the CHP officer following him. The CHP officer activated his patrol unit's forward solid red light
22 and used the public address (PA) system to instruct Respondent to pull to the right curb and stop.
23 Instead of stopping, Respondent kept on driving, and the CHP officer activated his siren and
24 chased Respondent through many streets and intersections, into a McDonald's parking lot, then
25 into an empty parking lot of an adjacent commercial building complex. From the parking lot,
26 Respondent entered Harbor Boulevard northbound the wrong way at 30 miles per hour (mph).
27 The CHP officer continued to follow Respondent at 90 mph without overtaking Respondent's
28 vehicle. Respondent turned quickly to the right in front of vehicles and entered the onramp of

1 southbound I-405 from Harbor Boulevard. The CHP officer observed that Respondent's vehicle
2 had stopped at an angle in the #1 lane of two lanes and that the driver's airbag had deployed with
3 major damage to the left front and minor damage along the left side of his vehicle. The CHP
4 officer stopped his patrol vehicle about 40 feet to the rear of Respondent's vehicle and slowly
5 approached on foot with his gun drawn. The officer observed Respondent moving within the
6 driver's seat and then he accelerated his vehicle rapidly. Respondent's left front tire detached
7 from his vehicle and Respondent continued driving on the rim. The CHP officer followed
8 Respondent again at about 50 mph, while he kept swerving left and right and continued at varied
9 speeds straddling the right shoulder and right lane of I-405. Respondent's vehicle almost came to
10 a stop twice, and then accelerated. Finally, Respondent's vehicle again stopped behind a parked
11 car. The CHP officer exited his vehicle and observed Respondent open the driver's door of his
12 vehicle. Respondent began to exit his vehicle and the CHP officer ordered him to stay in his
13 vehicle and sit down. Respondent exited and stumbled as he turned back to face the CHP officer
14 and was stabilizing himself by placing his hands on the left side of his vehicle. Respondent then
15 began running from the CHP officer with blood streaming down from the top of Respondent's
16 head. The CHP officer pursued Respondent on foot for 150 feet when Respondent then turned
17 into a driveway and towards the front door of a home at 3138 Bray Lane. The CHP officer drew
18 his gun and ordered Respondent down on the ground. Respondent raised his arms above his head
19 and told the officer he was out of breath. As Respondent spoke, the CHP officer smelled the odor
20 of alcohol emitting from Respondent and also noticed his speech was slurred. When Respondent
21 was questioned by the CHP officer he told the officer he did not have much to drink. Respondent
22 was arrested. During a vehicle inventory search incident to arrest, officers found a full bottle of
23 vodka and 12 unopened Bud Light cans of beer located within the trunk of Respondent's vehicle.
24 In the back seat and within a black laptop bag, a prescription bottle issued to someone other than
25 Respondent was found that contained 23 Hydrocodone pills. Respondent was transported to the
26 emergency room of Western Medical Center in the City of Santa Ana and received medical
27 attention and was administered a blood test which yielded the results of 0.18 percent BAC. After
28 treatment, Respondent was transported to the Orange County Jail and booked.

1 c. As a result of the conviction Respondent was sentenced to serve 365 days in
2 Orange County Jail with credit for 7 days, and after serving 90 days in the Orange County Jail,
3 the balance of the jail sentence to be served in any city jail, if eligible; 3 years formal probation;
4 complete a 18 month Multiple Offender Alcohol Program; install an Ignition Interlock Device on
5 any vehicle Respondent owns, operates, or drives, except employer's vehicle for 3 years; submit
6 proof of installation of certified Ignition Interlock Device to the Department of Motor Vehicles;
7 ordered to pay various fines and fees; pay restitution as to count 1; submit to DNA testing
8 pursuant to Penal Code section 296; submit to search at any time for any reason upon demand by
9 any law enforcement or probation officer; cooperate with probation officer in any plan for
10 psychiatric, psychological, alcohol and/or drug treatment, or counseling; seek training, schooling,
11 or employment and maintain residence as approved by the Probation Department; not associate
12 with persons known to him as parolees, convicted felons, users or sellers of illegal drugs, or
13 otherwise disapproved of by probation; not own, use, or possess any type of dangerous or deadly
14 weapon, including any firearm or ammunition; violate no law; not drink or be on drugs and drive;
15 submit to a chemical test of blood, breath, or urine on demand of any peace officer or probation
16 officer; consume no alcohol, not to present in any establishment where the primary items for sale
17 are alcoholic beverages; not drive without a valid driver's license, proof of valid auto liability
18 insurance or financial responsibility; use true name or date of birth only at all times; disclose
19 terms and conditions of probation when asked by any law enforcement or probation officer;
20 complete a new financial disclosure form if money is still owing on a restitution order or fine
21 120 days before the scheduled release from probation and file the form with the court at least
22 90 days before the scheduled release from probation.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Using Alcohol to a Dangerous Extent)**

25 18. Respondent's license is subject to discipline under Code section 2762,
26 subdivision (b), in that Respondent used alcohol to an extent dangerous to himself and others as is
27 set forth in paragraphs 15, 16, and 17, above, which are incorporated by this reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Criminal Convictions Involving the Consumption of Alcohol)**

3 19. Respondent's license is subject to discipline under Code section 2762,
4 subdivision (c), in that Respondent was convicted of criminal offenses involving the consumption
5 of alcohol as is set forth in paragraphs 15, 16, and 17, above, which are incorporated by this
6 reference.

7 **PRAYER**


8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 573547, issued to
11 Walter Milton Besse;

12 2. Ordering Walter Milton Besse to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 9/20/10


LOUISE R. BAILEY, M.ED., RN.
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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